

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

Civ. No. 04-74512
Crim. No. 01-80306
Hon. Gerald E. Rosen

GREER McCORMICK,

Defendant/Petitioner.

**ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND
DISMISSING PETITIONER'S §2255 ACTION**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on December 2, 2008

PRESENT: Honorable Gerald E. Rosen
United States District Judge

This matter having come before the Court on the October 30, 2008 Report and Recommendation of United States Magistrate Judge Paul J. Komives, recommending that the Court deny Petitioner Greer McCormick's § 2255 Motion to Vacate, Set Aside or Correct his Sentence; and no timely objections having been filed; and the Court having reviewed the Magistrate Judge's Report and Recommendation and the entire record of this action and having concluded that, for the reasons stated in the Report and Recommendation, the Petitioner's § 2255 motion should be denied and this action, accordingly, should be dismissed; and the Court being otherwise fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation [Crim. Dkt. # 44] be, and hereby is, adopted by this Court.

IT IS FURTHER ORDERED that, for the reasons set forth in the Magistrate Judge's Report and Recommendation, Petitioner McCormick's § 2255 Motion [**Crim. Dkt. # 33**] be, and hereby is, DENIED, and the above-captioned § 2255 action is, accordingly, DISMISSED.

IT IS FURTHER ORDERED that, for the reasons stated by the Magistrate Judge, pursuant to 28 U.S.C. § 2243(c) and 28 U.S.C. § 2255, no certificate of appealability should issue for purposes of appeal of this matter. The Court will also deny Petitioner leave to appeal *in forma pauperis*. A petitioner seeking to appeal the denial of a habeas petition or a § 2255 motion will not be permitted to proceed *in forma pauperis*, where the appeal would be frivolous. *Hence v. Smith*, 49 F. Supp. 2d 547, 549 (E.D. Mich. 1999).

s/Gerald E. Rosen

Gerald E. Rosen
United States District Judge

Dated: December 2, 2008

I hereby certify that a copy of the foregoing document was served upon Greer McCormick (USP Coleman II, P.O. Box 1034, Coleman, FL 33521) and counsel of record on December 2, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager